

## **Request for Proposals**

### **Silverbell Subdivision**

**PROPERTY OFFERED:** Approximately 31 acres of vacant land to be platted as a 120 lot subdivision located on Silverbell Road in Tucson, Arizona.

**PRICE:** \$1,942,500 appraised value for R-1 vacant land to be platted as a 120 lot subdivision, all reasonable offers considered.

**PROPOSAL DUE DATE:** Wednesday, October 20, 2004 at 2:30 p.m. local time.

**PROPOSAL SUBMITTAL LOCATION:** Community Services Department  
310 N. Commerce Park Loop  
Santa Rita Building, 1<sup>st</sup> Floor  
Tucson, AZ 85745

**PROJECT MANAGER:** Joe Comella, Community Services Department, (520) 791-4123.

**PRE-PROPOSAL CONFERENCE DATE:** Thursday, September 23, 2004 at 8:30 a.m.

**PRE-PROPOSAL CONFERENCE LOCATION:** 320 N. Commerce Park Loop  
Sentinel Building, 1<sup>st</sup> Floor  
Tucson, AZ 85745

**ANTICIPATED OUTCOME:** Selection of preferred developer by November, 2004, to negotiate an acceptable development agreement; with completion of development agreement for residential development by December, 2004.

If you experience any problems receiving this Request for Proposal, please call Ann Vargas at (520) 791-4123.

Competitive sealed proposals for the specified property shall be received by the Community Services Department (“the Department”), 310 N. Commerce Park Loop, Tucson, Arizona 85745, until the time and date cited. Proposals received by the correct time and date shall be publicly recorded.

Proposals must be in the actual possession of the Office at the location indicated, on or prior to the exact time and date indicated above. Late proposals shall not be considered. The prevailing clock shall be the Office date/time stamp clock.

Proposals must be submitted in a sealed package with the statement “Silverbell Subdivision RFP” and the Offeror's name and address clearly indicated on the package. All proposals must be completed in ink or typewritten. Questions must be addressed to the Project Manager listed above.

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**BACKGROUND**

**I. Area Overview:**

Tucson is one of the oldest continuously settled communities in North America, and celebrates a diversity of cultures, architecture, and peoples. The City is located in Pima County, Arizona, the nation's 53<sup>rd</sup> largest county according to Census 2000 with a population estimate of 847,591. Tucson was the nation's 30<sup>th</sup> largest city in 2000. Its current estimated population is 500,000, covering just over 223 square miles. More detailed information about Tucson may be obtained from the City of Tucson Comprehensive Planning Task Force or the Task Force's web page at [www.cityoftucson.org/planning](http://www.cityoftucson.org/planning).

The subject property is located on Silverbell Road, in an area that is experiencing rapid growth. New subdivisions are under construction to the west, and planned for the adjacent property to the north. The Silverbell Municipal Golf Course is in the northeast quadrant of adjacent land. Silverbell is a designated Scenic Route to be developed as a four lane divided roadway, although no current funding is available.

**II. The Goals:**

The City of Tucson is developing Silverbell Subdivision in conjunction with the development of Depot Plaza, a redevelopment of the current Martin Luther King public housing building and adjacent land in downtown Tucson. To offer a patio home alternative to the downtown site, thirty duplex townhomes for elderly and disabled public housing tenants will be located in the Silverbell Subdivision. The public housing will remain under the ownership and management of the City of Tucson.

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The vision of the Silverbell Subdivision is to create an integrated mixed income community that reflects the best of current design principles and construction quality. The public housing duplex townhomes should fit into the architectural context of the subdivision, and complement and enhance the overall appearance of the project. The density of the subdivision should be compatible with the densities of the adjacent subdivisions.

**III. (reserved)**

**IV. Site Information:**

The project site is approximately 31 acres of land owned by the City of Tucson on the east side of Silverbell Road between Grant and Sweetwater. The site is bounded on the east by the Western Area Power Authority (WAPA) power line easement; on the south by a drainage channel; and on the north by a new planned subdivision. An ALTA survey of the larger parcel of land that contains the proposed subdivision is attached as Exhibit A

The site is zoned R-1, and could be platted under the RCP-4A development designator. A preliminary conceptual layout of the subdivision and proposed boundaries is attached as Exhibit B. This conceptual plan is only to illustrate the viability of the proposed densities, and should not be construed as limiting other design solutions. Silverbell is designated as a scenic corridor, which requires 20% of open view within 400 feet of the western property line.

An appraisal of the property, with the assumption that the proposed subdivision layout attached as Exhibit B was in fact an approved final plat, was completed in August of 2004. The appraised value of the platted parcel is \$1,942,500. This appraisal is based on 105 developable market lots, excluding the value of the public housing townhome lots, which will be retained and developed by the City. The 15 City lots shown on Exhibit B will be split at the time the duplex townhome designs are finalized, to conform to the R-1 zoning requirement of one home per lot.

A Phase I Environmental Site Assessment was performed in December of 2003. Environmental concerns were reviewed and addressed in a second review in May of 2004. No impediments were found to developing the proposed subdivision. A Cultural Resources Survey conducted in November of 2003 found no features that would prevent the project from being developed as proposed.

It is anticipated that the only Silverbell improvements that will be required are turn lanes and associated curbing and sidewalks. The possible future La Cholla extension will require a 100 foot ROW, but will only be developed as a two lane road at this time to serve this subdivision.

**V. Project Goals:**

The following summarizes key objectives and design principles for this project:

1. Integration of public housing townhomes

The project design should seamlessly integrate the public housing townhomes into the design context of the subdivision.

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2. Best design practices

Housing should respond to Tucson's climate, culture and traditions. The Sonoran Institute's "Building from the Best of Tucson" publication of 2001 should be used as a guide for the design principles for Silverbell Subdivision. This publication is available at [www.sonoran.org](http://www.sonoran.org).

3. Housing Options

Housing units may include detached single family and townhomes, with several floor plans and elevations to encourage unique configuration, design diversity, and a range of costs.

4. Garages

A primary design goal is to reduce the impact of a repetitive streetscape of garage doors. The preliminary layout offers the possibility of an alley and rear loaded garages for the units in the project's interior. The goal for the street front access perimeter lots is to have not more than 50% of the garage doors facing the street. Parking solutions should be architecturally integrated with other project elements and compatible with the street character.

5. Pedestrian & Bicycle Connections

Pedestrian and bicycle circulation should link to public transit, River Park trails, the Silverbell Municipal Golf Course and include safe, aesthetically pleasing, pedestrian-oriented open space.

9. Construction Timing

Complete infrastructure within nine months after approval of the final plat. Complete 20% of the homes within 18 months of approval of final plat.

**VI. Selection Process:**

The City of Tucson will conduct the selection process. Proposals must be responsive to the criteria outlined herein for consideration. Each entity submitting a proposal in response to this RFP (and all members of its development team) is referred to in this RFP as "Offeror".

**VII. Project Schedule:**

<u>Milestones</u>	<u>Date</u>
Issuance of RFP	Wednesday, September 15, 2004
Pre-proposal Conference	Thursday, September 23, 2004
Proposals Due	Wednesday, October 20, 2004
Review and Selection	November – December 2004

The successful Offeror will be required to enter into a development agreement with the City of Tucson, committing the parties by contract to perform in a manner consistent with the proposal. The

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development agreement will be negotiated between the successful Offeror and the City of Tucson. The development agreement shall specify the interest in the property transferred to the Offeror, a fee right.

**VIII. Scope of Work:**

**Development Requirements:**

It is the intent of the City to contract with an Offeror capable of designing and constructing a residential subdivision in accordance with the requirements of this RFP and any subsequent contractual documentation negotiated between the City and the successful Offeror. The successful Offeror will be required to construct the improvements based upon specifications provided by the tentative plat and in compliance with City of Tucson Land Use Code, and all other local, state and federal laws, rules and regulations. The City of Tucson will approve the actual design of the development as a part of the development agreement, and may choose to obtain design feedback through a public input process.

The successful Offeror must satisfy the City of Tucson that it has the technical knowledge and expertise, licenses, and financial and management capability to construct the improvements and the proposed market rate housing. The successful Offeror must satisfy the City of Tucson that it has and will continue to have the financial and management capability to complete the development over the duration of the development agreement. The foregoing shall be demonstrated on the basis of information provided in this RFP.

**Project Incentives:**

To lessen the financial risk associated with platting a new subdivision, the sales Agreement will have a delayed closing, pending recordation of the final plat. The Agreement between the City of Tucson and the Offeror shall be terminated in the event platting the proposed subdivision is not feasible due to unforeseen site conditions. Should the Offeror terminate the Agreement for any other reason before completion of the plat, all work related to the plat shall become the property of the City of Tucson.

An appraisal of the property, with the assumption that the proposed subdivision layout attached as Exhibit B was in fact an approved final plat, was completed in August 2004. The appraised value of the platted parcel is \$1,942,500. This appraisal is based on 105 developable market lots and excludes the value of the 15 public housing townhome lots. The actual number of market lots may be less than 105 due to compliance with applicable codes and regulations, or may increase by as many as 10 lots based on the Offeror's product size and lot size requirements. The City's goal is to develop this subdivision at similar densities to the existing subdivisions along Silverbell. Therefore additional density will not be considered.

The Offeror will assume responsibility for all platting and infrastructure costs. The City will only retain ownership of the 15 improved lots, and build these units under separate contract. The cost of the improvements that could be assigned to the 15 City lots may be a consideration in the purchase price.

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**Project Timelines:**

Platting shall be completed within 9 months of acceptance of the offer. Extensions will be considered based on legitimate delays beyond the control of the Offeror. Failure of the Offeror to actively pursue the project or meet this requirement will cause the agreement to be terminated.

Phase I shall be completion of project infrastructure including required Silverbell turn lane improvements, the two lane La Cholla extension and all infrastructure internal to the site. Infrastructure includes construction of all roads and utilities to each lot. The Offeror shall complete Phase I within nine months of close of escrow. Extensions will be considered based on legitimate delays beyond the control of the Offeror. Failure of the Offeror to comply with this requirement will result in a financial penalty of \$1,000,000 payable to the City of Tucson.

**Additional Requirements:**

Each Offeror's proposal shall include specific information on how they will meet the requirements of this RFP. The Offeror shall provide any and all information requested to demonstrate their ability to meet the scope of this project. This document contains all submittal requirements that will be utilized in evaluating solicitations and determining the submittal(s) deemed most advantageous to the City of Tucson. Offerors are encouraged to provide any additional materials and/or information that will assist the City in the evaluation of their proposal. The Offeror must submit a completed Offer to Purchase for consideration.

**Additional Information Regarding Public Record Laws:**

All proposals submitted in response to this request are subject to the terms of Arizona's public records statutes (Title 39 of the Arizona Revised Statutes) and all rules, regulations and interpretations resulting therefrom. Any Offeror that submits a proposal in response to this request acknowledges and understands that the City of Tucson is a public entity required to abide by public records laws, and that the City shall not be liable for disclosures they deem to be required by law.

The City will give due regard for the protection of proprietary or confidential information contained in all proposals submitted in response to this request. However, a general blanket statement by the Offeror that the material or information is proprietary or confidential will not be sufficient. If the Offeror desires that any material in the submitted proposal be withheld from disclosure during the time period after the offer opening and prior to the award, the Offeror is instructed to identify that material with specificity, to identify how disclosure prior to the award would harm the Offeror, and to provide an explanation why the material may be withheld from disclosure under Arizona's public records law. Similarly, if the Offeror desires that any material in the submitted proposal be withheld from disclosure even after the award, the Offeror is instructed to identify that material with specificity, to identify how disclosure prior to the award would harm the Offeror, and to provide an explanation why the material may be withheld from disclosure under Arizona's public records law.

## **IX. INSTRUCTIONS TO OFFERORS**

- 1. PRE-PROPOSAL CONFERENCE:** Although not mandatory, potential Offerors are strongly encouraged to attend the pre-proposal conference. The date and time of the conference is on the cover page of this document. Any questions as to the requirements of this RFP or any apparent omission or discrepancy should be presented to the City at this conference. The City will issue a written amendment to the RFP if required. Oral statements or instructions will not constitute an amendment to this RFP.
- 2. PROPOSAL FORMAT:** Original and 9 copies (10 total) of each proposal, complete with all financial data, Offeror qualifications, supporting documentation, and Offer to Purchase shall be submitted on the forms and in the format specified in the RFP. The original copy of the proposal shall be clearly labeled "Original" and be single-sided, unbound. Each section of the submittal shall be tabbed, and shall include a minimum of the following sections: Price, Offer and Acceptance, Original RFP, Evaluation Criteria. The City will not provide reimbursement for the cost of developing or presenting proposals in response to this RFP.
- 3. PREPARATION OF PROPOSAL:**
  - A. All proposals shall be in the format outlined above, and utilize the forms provided in this RFP package. It is permissible to copy these forms as required.
  - B. The offer and acceptance page shall be submitted with an original ink signature by the person authorized to sign the proposal.
  - C. Erasures, interlineations, or other modifications in the proposal shall be initialed in original ink by the authorized person signing the vendor offer.
  - D. Periods of time, stated as a number of days, shall be in calendar days.
  - E. It is the responsibility of all Offerors to examine the entire RFP package, seek clarification of any requirement and to check all responses for accuracy before submitting a proposal.
- 4. WHERE TO SUBMIT PROPOSALS:** Submittal information is on the first page of this RFP.
- 5. OFFER AND ACCEPTANCE PERIOD:** In order to allow for an adequate evaluation, the City requires an offer in response to this solicitation to be valid and irrevocable for one hundred twenty (120) days after the opening time and date. The City reserves the right to extend the Offer and Acceptance Period, to allow for sufficient time for proposal evaluation and negotiation.
- 6. INQUIRIES:** Any question related to the RFP shall be directed to the Project Manager whose name appears on the first page of this document. Questions should be submitted in writing when time permits. Any correspondence should refer to the appropriate RFP page and paragraph number. Oral interpretations or clarifications will be without legal effect. The RFP may only be modified by a written Amendment.
- 7. DISCUSSIONS:** After the initial receipt of proposals, discussions may be conducted with Offerors who submit proposals.

- 8. CONTRACT NEGOTIATIONS:** At the completion of the evaluation process, the City may enter into discussions with the Offeror(s) being considered award, to identify any needed revisions to the original proposal. Best and final offer may be requested of the Offeror(s), or the Offeror that gives the most advantageous proposal may be recommended for award. Award shall be made by the City Manager to the Offeror whose proposal is most advantageous to the City.
- 9. AWARD OF CONTRACT/PURPOSE OF REQUEST FOR PROPOSAL:** Notwithstanding any other provision of the Request for Proposal, the City reserves the right to:
- (1) waive any immaterial defect or informality; or
  - (2) reject any or all proposals, or portions thereof; or
  - (3) reissue a new or revised Request for Proposal.

**This RFP does not commit the City of Tucson to enter into a contract or development agreement, to pay any cost incurred in the preparation of a submission in response to this request or in subsequent exclusive negotiations. Further, this RFP does not convey to any successful Offeror any contract property rights.**

- 10. FAMILIARIZATION OF SCOPE OF WORK/DUE DILIGENCE:** Before submitting a proposal, each Offeror shall familiarize itself with the Scope of Work, laws, regulations and other factors affecting performance of work. It shall carefully correlate its observations with requirements of the Contract and otherwise satisfy itself as to the expense and difficulties attending the performance of the work. The submission of a Proposal will constitute a representation of compliance by the Offeror. There will be no subsequent financial adjustment, other than that provided by the Contract, for lack of such familiarization.

**The information provided in this RFP is designed to assist Offerors with information the City has assembled as of this preliminary stage of the process. Offerors will be expected to conduct their own due diligence in all relevant matters prior to commencement of development. The City of Tucson, and their agents and representatives, make no representations or warranties of any kind.**

- 11. LATE PROPOSALS:** Late proposals shall not be considered.
- 12. WITHDRAWAL OF PROPOSAL:** At any time prior to a specified solicitation due time and date an Offeror (or designated representative) may withdraw the proposal in writing. Facsimiles, telegraphic or mailgram withdrawals shall not be considered.
- 13. AMENDMENT OF REQUEST FOR PROPOSALS:** The Offeror shall acknowledge receipt of a Request for Proposal amendment by signing and returning the document by the specified due time and date.
- 14. SUBMITTAL:** The offer and acceptance sheet, and any RFP amendments must be signed and returned with the Offeror's proposal.



- 15. PROPERTY RIGHTS/DISCLOSURE OF INFORMATION:** All materials submitted in response to this RFP shall become the property of the City of Tucson. By tendering a proposal, the Offeror agrees that the contents of every other proposal is confidential and proprietary and waives any right of access to those proposals during the review period. The foregoing waiver shall not apply to the proposal selected under this RFP, if any, or to the proposal of any developer contesting, protesting or otherwise challenging an award or recommendation, once made. Any developer tendering a proposal in response to this RFP further acknowledges and understands that the City of Tucson is a public entity required to abide by public records laws and shall not be liable for disclosures required by law.
- 16. SUBCONTRACTORS:** Offeror must list any subcontractor to be utilized in performance of services herein. For each subcontractor, detail on respective qualifications must be included.
- 17. PROPOSAL REJECTION/RIGHT TO DISQUALIFY:** Submission of additional terms, conditions and/or agreements with the proposal may result in proposal rejection. The City of Tucson reserves the right to disqualify any Offeror who fails to provide information or data requested hereby or who provides materially inaccurate or misleading information or data. The City of Tucson reserves the right to disqualify any Offeror on the basis of any real or apparent conflict of interest. This disqualification is at the sole discretion of the City of Tucson.
- 18. PROPOSAL RESULTS:** Proposal results are not provided in response to telephone inquiries. A tabulation of proposals received will be on file in the City Manager's Office and available for review after contract award.

**X. Proposal Evaluation Requirements:**

**1. Proposal Evaluation Criteria**

Proposals will be evaluated based on the following criteria:

- A. Responsiveness to the Project Goals in Section V.
- B. Price and the Offeror's approach to cost-sharing, if any. The property has been appraised for \$1,942,500 as a platted subdivision based on Exhibit B.
- C. Experience and Capabilities of Offeror: A demonstration of successful prior experience, including subdivisions of similar size and sufficient capacity and capability to undertake the proposal tendered.
- D. Interview (Optional, at City's discretion)

**2. Requirements Specific to Evaluation Criteria**

The narrative portion and the materials presented in response to this RFP shall be submitted in the same order as requested and must contain, at a minimum, the following:

- A. Responsiveness to the Project Goals in Section V. A graphic response will be required to demonstrate the varied streetscape elevation that is one of the Project Goals, and demonstrate the 20% open view prescribed by the scenic corridor requirements.

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C. Price and the Offeror's approach to cost-sharing, if any

The property has been appraised for \$1,942,500 as a platted subdivision based on Exhibit B. An earnest money deposit in the amount of \$100,000 must be provided with the proposal for consideration. See offer sheet for details regarding financing and offer format.

The City will share in the development costs related to the public housing.

D. Experience and Capabilities of Offeror

Offer shall provide the following information:

- ◆ Names, addresses, telephone, facsimile numbers and e-mail addresses of all Offeror team members, consultants and entities, including a project organization chart indicating key personnel, responsibilities, and relationships within the Offeror's organization and the designated lead project coordinator.
- ◆ Names and qualifications of all members of Offeror's board of directors.
- ◆ Names and qualifications of members of Offeror's staff whom Offeror currently believes will be involved with the project.
- ◆ Names, employers, addresses, and qualifications of all known professional consultants to be used on the project (Arizona State and local licenses for professionals will be required as mandated by law.) Name and address of Offeror's insurance carrier and description of Offeror's proposed insurance coverage for the project.
- ◆ Complete description of the status and resolution of any pending or prior litigation (within the past five years) involving the activities of any of Offeror's staff, team members, or team members' staff, to the extent that the subject matter of the litigation is material to the evaluation of the submittal. Examples of litigation issues material in this instance include, but are not limited to, fraud and breach of contract.
- ◆ At least two examples of prior experience in developing projects of similar size and scope, including description of the project, dates of the project, client contact name and address and phone number.
- ◆ Examples of ability to obtain, structure and implement financing for residential development projects.
- ◆ Copy of Offeror's entity formation documentation. If Offeror is a corporation, a copy of Offeror's articles of incorporation and bylaws. If a partnership, a copy of Offeror's partnership agreement. If a 501 (c) 3 corporation or entity, documentation from the Internal Revenue Service confirming that status.
- ◆ Annual reports, financial ratings or other supportive information indicating the financial condition of the Offeror, all subsidiary units and parent organization, for the last five years.
- ◆ Names, addresses and telephone numbers of banks, financial and lending institutions and individuals who have provided financial assistance to the Offeror or who have participated financially in any of the Offeror's major projects during the past five years.
- ◆ Other pertinent documentation or evidence of financial capacity and ability to provide guarantees required during the development process.

D. Interview

Offerors may be requested to attend a panel interview and/or to provide additional information to the City of Tucson regarding their submittal information.

**GENERAL**

**A. Shortlist:**

The City reserves the right to shortlist the Offerors. The City may conduct interviews before or after any shortlisting process. However, the City may determine that shortlisting and/or interviews are not necessary.

**B. Additional Investigations:**

The City reserves the right to make such additional investigations as it deems necessary to establish the competence and financial stability of any firm submitting a proposal. Such additional investigations may include site visits of other locations where the Offeror has performed similar work. Any such visit shall be at the City's expense. Any information gathered during such site visits shall be utilized during the evaluation process. The City of Tucson may choose not to conduct site visits.

**C. Prior Experience:**

Experiences with the City and entities which evaluation committee members represent shall be taken into consideration when evaluating qualifications and experience.

**D. Exceptions To Contract Terms And Specifications:**

The Offeror shall clearly identify any proposed deviations from the Contract Terms or Specifications in the Request for Proposal. Each exception must be clearly defined and referenced to the proper paragraph in this RFP. The exception shall include, at a minimum, the Offeror's proposed substitute language and opinion as to why the suggested substitution will provide equivalent or better service and performance.

**XI. SPECIAL TERMS AND CONDITIONS**

1. RESERVATION OF RIGHTS BY CITY OF TUCSON

The issuance of this RFP and the acceptance of submissions do not constitute an agreement by the City of Tucson that any contract will actually be entered into by the City of Tucson.

2. **FORM AND TERMS OF SALE AND DEVELOPMENT AGREEMENT**

By submitting a proposal in response to this RFP, each Offeror agrees that the development agreement and sale documents and any other contract resulting from this RFP will be drafted under the supervision of the Tucson City Attorney. Offerors may not insist on the use of standard contract agreements, documents or forms, and waive any demand for the use of standard agreement forms. Selection of an Offeror does not obligate the City of Tucson to accept all of the terms of the successful Offeror's proposal.

The Development Agreement shall include terms that address the following:

1. Requirements set forth elsewhere in this RFP;
2. Provisions contained in or related to the successful proposal;
3. Offeror's payment of any and all property taxes, assessments, possessory interest taxes, utility costs, and all other out of pocket expenses related to the possession or use of the Premises;
4. Restriction of the use of the Premises to the uses outlined herein;
5. Adequate security in an amount and type determined appropriate by the City of Tucson for (a) construction, (b) payment of subcontractors, laborers and materialmen, and (c) operation, management and maintenance of the development;
6. Other matters typically addressed in a complex government or real estate transaction.

3. **COPYRIGHT AND PATENT INDEMNIFICATION**

By submitting a proposal in response to this RFP, each Offeror agrees to hold the City of Tucson, and their officers, agents, employees, and consultants free and harmless against any and all liability, including costs of claims, suits and attorneys' fees, arising from, growing out of, or incidental to the actual or alleged use of any copyrighted composition, secret or proprietary process, patented or unpatented invention, article or appliance.

4. **APPLICABLE LAW**

Any and all disputes arising under this RFP and any contract negotiated as a result of this RFP shall be governed by the laws of the State of Arizona. The venue for any action brought to enforce provisions of the contract shall be in Pima County, Arizona.

5. **NO PARTNERSHIP/BUSINESS ORGANIZATION**

Nothing in this RFP or in any subsequent development agreement, lease, or any other contract entered into as a result of this RFP shall constitute, create, give rise to or otherwise be recognized as a partnership or formal business organization of any kind between or among the City of Tucson or the Offeror.

6. **EMPLOYMENT RESTRICTIONS AND INDEMNITY**

No person who is an officer, employee, contractor or consultant of an Offeror shall be an officer or employee of the City of Tucson. No rights of the City of Tucson's civil service, retirement or personnel rules accrue to Offeror, its officers, employees, contractors, or

consultants. The successful Offeror shall have the total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation and occupational disease compensation insurance unemployment compensation, other benefits and taxes and premiums appurtenant thereto concerning its officers, employees, contractors, and consultants. Offeror shall save and hold the City of Tucson harmless with respect to any and all claims for payment, compensation, salary, wages, bonuses, retirement, withholdings, worker's compensation and occupational disease compensation insurance unemployment compensation, other benefits and taxes and premiums in any way related to Offeror's officers, employees, contractors and consultants.

7. IMMIGRATION AND NATURALIZATION

All Offerors shall be required to be in compliance with the Naturalization Reform Act of 1986 and all rules and regulations promulgated thereunder.

8. NON-DISCRIMINATION REQUIREMENTS

In its employment policies and practices, public accommodations and provision of services, Offeror shall comply with all relevant and applicable federal, state, and local laws, regulations and standards relating to discrimination, bias, and/or limitations, such as, but not limited to,

Titles VI and VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Arizona Civil Rights Act, the Arizonans with Disabilities Act, the Human Relations provisions of the Tucson Code, and the Mayor and Council policy adopted on September 25, 2000, prohibiting the direct or indirect grant of discretionary City of Tucson funds to organizations that have a policy of discrimination on the basis of race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status or marital status.

9. CONFLICTS OF INTEREST

This RFP and any award, development agreement, lease, or other relationship resulting from this RFP are subject to the Arizona conflict of interest laws, A.R.S. § 38-501 et seq., including A.R.S. § 38-511, which provides for cancellation of contracts in certain circumstances involving conflicts of interest.

XII. STANDARD TERMS AND CONDITIONS

1. CERTIFICATION: By signature on the Offer and Acceptance page, Offeror certifies:

- A. The submission of the offer did not involve collusion or other anti-competitive practices.
- B. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, or A.R.S. Sec 31-1461, et seq.
- C. The Offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer.

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- D. Offerors certify by signing that the product being furnished in this solicitation contains no tropical hardwood excluded from consideration of purchase by the City of Tucson. A list of tropical hardwood may be obtained from the City's Department of Procurement. At the request of the City, Offerors may be required to provide documentation from their supplier stating to origin of the wood products that they are bidding. Failure to provide this information when requested, will result in the offer being rejected as non-responsive. Vendors knowingly violating the tropical hardwood restriction may be barred from any further contracting with the City of Tucson.
- E. The Offeror submitting the offer hereby certifies that the individual signing the offer is an authorized agent for the Offeror and has the authority to bind the Offeror to the contract.

- 2. **TERMINATION OF CONTRACT:** This contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty (30) days written notice to you. The City at its convenience, by written notice, may terminate this contract, in whole or in part. If this contract is terminated, the City shall be liable only for payment under the payment provisions of this contract for services rendered and accepted material received by the City before the effective date of termination.

The City reserves the right to cancel the whole or any part of this contract due to failure of contractor to carry out any term, promise, or condition of the contract. The City will issue a written ten (10) day notice of default to contractor for acting or failing to act as in any of the following:

In the opinion of the City, contractor provides personnel that do not meet the requirements of the contract;

In the opinion of the City, contractor fails to perform adequately the stipulations, conditions or services/specifications required in this contract;

In the opinion of the City, contractor attempts to impose on the City personnel or materials, products or workmanship, which is of an unacceptable quality.

Contractor fails to furnish the required service and/or product within the time stipulated in the contract;

In the opinion of the City, contractor fails to make progress in the performance of the requirements of the contract and/or give the City a positive indication that contractor will not or cannot perform to the requirements of the contract.

Each payment obligation of the City created hereby is conditioned upon the availability of City, State and Federal funds, which are appropriated or allocated for the payment of such an obligation. If funds are not allocated by the City and available for the continuance of service herein contemplated, the contract period for the service may be terminated by the City at the end of the period for which funds are available. The City shall notify contractor at the earliest

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possible time which service will or may be affected by a shortage of funds. No penalty shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

3. **RECORDS:** Internal control over all financial transactions related to this contract shall be in accordance with sound fiscal policies. The City may, at reasonable times and places, audit the books and records of you or any and all of your subcontractors. Said audit shall be limited to this contract and its scope of services.
4. **ARBITRATION:** It is understood and agreed that no provision of the contract relating to arbitration or requiring arbitration shall apply to or be binding upon the City except by the City's express written consent given subsequent to the execution of the contract. However, at the City's sole option, or by other means expressly approved by the City, disputes may be resolved through arbitration. The dispute shall be resolved as provided for in A.R.S. Sec. 12-1501, et seq. Contractor shall continue to render the services required by this contract without interruption, notwithstanding the provisions of this section.
5. **INDEPENDENT CONTRACTOR:** It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever.

Contractor shall not be entitled to compensation in the form of salaries, or to paid vacation or sick days by the City, and that such days do not accumulate for the use of same at a later date.

The City of Tucson will not provide any insurance coverage to Contractor, including Worker's Compensation coverage. The Contractor is advised that taxes or social security payments shall not be withheld from a City payment issued hereunder and that Contractor should make arrangements to directly pay such expenses, if any.

6. **AFFIRMATIVE ACTION:** Contractor agrees to abide by the provisions of the Tucson Code Chapter 28, Article XII Sections 28-137 to 28-144, Affirmative Action by City Contractors. Contractor, your subcontractor(s) and supplier(s) agree to adhere to a policy of equal employment opportunity and demonstrate an affirmative effort to recruit, hire, promote and upgrade the position of employees regardless of race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status, or marital status and who agree and are responsive to the City's goals.

Specifically, if the Contractor's offer is in excess of \$10,000.00, then the Contractor agrees to submit the following reports to the City's Equal Opportunity Office before contract award:

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- i. A copy of their Federal EEO-1 Report, if Contractor was ever required to file one with the Federal Government;
- ii. A completed City of Tucson Affirmative Action Questionnaire;
- iii. An Affirmative Action Plan.

All such reports on file with the Equal Employment Opportunity Office will be updated at least annually. The Equal Employment Opportunity Office may for good cause recommend to the City's City Manager that failure to comply with the requirements of this subsection be waived and that the offer be accepted contingent upon receipt of the required reports before a notice to proceed is issued.

7. **HUMAN RELATIONS:** Contractor agrees to abide by the provisions of the Tucson Code Chapter 28, Article XII Section 28-138, Provision against discrimination required in all city contracts.
8. **NON-EXCLUSIVE CONTRACT:** Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City of Tucson. The City reserves the right to obtain like goods or services from another source when necessary.
9. **PATENT INFRINGEMENT:** The procuring agency should advise the Contractor of any impending patent suit and provide all information available. The Contractor shall defend any suit or proceeding brought against the procurement agency based on a claim that any equipment, or any part thereof, furnished under this contract constitutes an infringement of any patent, and the Contract shall pay all damages and costs awarded therein, excluding incidental and consequential damages, against the procuring agency. In case said equipment, or any part thereof, is in such suit held to constitute infringement and use of said equipment or part is enjoined, the Contractor shall, at its own expense and at its option, either procure for the procuring agency the right to continue using said equipment or part, or replace same with noninfringing equipment, or modify it so it becomes noninfringing.
10. **DUPLEXED/RECYCLED PAPER:** In accordance with efficient resource procurement and utilization policies adopted by the City of Tucson, the Contractor shall ensure that, whenever practicable or otherwise directed herein, all printed materials produced by the Contractor in the performance of this contract are duplexed (two-sided copies), printed on recycled paper and labeled as such.
11. **AMERICANS WITH DISABILITIES ACT:** The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the Act.
12. **CONFIDENTIALITY OF RECORDS:** The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the contract shall be used by or disclosed by it, its agents, officers, or employees, except as



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required to efficiently perform duties under the contract. Persons requesting such information should be referred to the City. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of contractor as needed for the performance of duties under the contract, unless otherwise agreed to in writing by the City.

13. **SHIPMENT UNDER RESERVATION PROHIBITED:** Contractor is not authorized to ship materials under reservation and no tender of a bill of lading shall operate as a tender of the materials. Non-compliance shall conform to the cancellation clause set forth within this document.
14. **GRATUITIES:** The City may, by written notice to the Contractor, cancel this contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the contractor or any agent or representative of the Contractor, to any officer or employee of the City amending, or the making of any determinations with respect to the performing of such contract. In the event this contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.
15. **APPLICABLE LAW:** This contract shall be governed by, and the City and Contractor shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this contract or in laws pertaining specifically to the City. This contract shall be governed by the law of the State of Arizona, and suits pertaining to this contract shall be brought only in Federal or State courts in the State of Arizona.
16. **CONTRACT:** The contract shall be based upon the Request for Proposal issued by the City and the offer submitted by the Contractor in response to the Request for Proposal. The offer shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the Request for Proposal. The City reserves the right to clarify any contractual terms with the concurrence of the Contractor; however, any substantial non-conformity in the offer, as determined by the City's City Manager, shall be deemed non-responsive and the offer rejected. The contract shall contain the entire agreement between the City of Tucson and the Contractor relating to this requirement and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders, or master agreements in any form.
17. **LEGAL REMEDIES:** All claims and controversies shall be subject to the Tucson City Charter and Code.
18. **CONTRACT AMENDMENTS:** This contract shall be modified only by a written contract amendment signed by the City's City Manager and persons duly authorized to enter into contracts on behalf of the Contractor.
19. **PROVISIONS REQUIRED BY LAW:** Each and every provision of law and any clause required by law to be in the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

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20. **SEVERABILITY:** The provisions of this contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the contract which may remain in effect without the valid provision or application.
21. **PROTECTION OF GOVERNMENT BUILDINGS:** The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation (such as trees, shrubs, and grass) on City property. If the Contractor fails to do so and damages such buildings, equipment and vegetation, the Contractor shall replace or repair the damage at no expense to the City, as directed by the Project Manager. If the Contractor fails or refuses to make such repair or replacement, then the Contractor shall be liable for the cost thereof, which may be deducted from the contract price.
22. **INTERPRETATION - PAROL EVIDENCE:** This contract is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this contract. Acceptance or acquiescence in a course of performance rendered under this contract shall not be relevant to determine the meaning of this contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.
23. **ASSIGNMENT - DELEGATION:** No right or interest in this contract shall be assigned by the contractor without prior written permission of the City, and no delegation of any duty of Contractor shall be made without prior written permission of the City's City Manager. The City shall not unreasonably withhold approval and shall notify the Contractor of the City's position within 15 (fifteen) days of receipt of written notice by the Contractor.
24. **SUBCONTRACTS:** No subcontract shall be entered into by the Contractor with any other party to furnish any of the material/service specified herein without the advance written approval of the City's Project Manager. All subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the subcontractor were the Contractor referred to herein. The Contractor is responsible for contract performance whether or not subcontractors are used. The City shall not unreasonably withhold approval and shall notify the Contractor of the City's position within 15 (fifteen) days of receipt of written notice by the Contractor.
25. **RIGHTS AND REMEDIES:** No provision in this document or in the Contractor's proposal shall be construed, expressly or by implication as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim or default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the acceptance of materials or services, obligations imposed by this contract or by law, and shall not be deemed a waiver of any right of either party to insist upon the strict performance of the contract.

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26. **PROTESTS:** A protest shall be in writing and shall be filed with the City Manager. A protest of a Request for Proposal shall be received at the Office of the City Manager before the Request for Proposal opening date. A protest of a proposed award or of an award shall be filed within 10 (ten) days after the protestor knows or should have known the basis of the protest. A protest shall include:
  - A. The name, address, and telephone number of the protestor;
  - B. The signature of the protestor or its representative;
  - C. Identification of the Request for Proposal;
  - D. A detailed statement of the legal and factual grounds of protest including copies of relevant documents; and,
  - E. The form of relief requested.
27. **WARRANTIES:** Contractor warrants that all material or service delivered under this contract shall conform to the specifications of this contract. Mere receipt of shipment of the material or service specified and any inspection incidental thereto by the City, shall not alter or affect the obligations of the Contractor or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in this document.
28. **INDEMNIFICATION:** Contractor shall indemnify, defend, and hold harmless the City, from any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including any reasonable attorney's fees and/or litigation expenses, which may be brought or made against or of any person, caused by, arising out of, or contributed to, in part, by reasons of any act, omission, professional error, fault, mistake, or negligence of the Contractor, its employees, agent, representatives, or subcontractors, their employees, agents, or representatives in connection with or incidental to the performance of this Agreement, or arising out of Worker's Compensation Claims, unemployment compensation claims, or unemployment disability compensation claims of employees of the Contractor and/or its subcontractors or claims under similar such laws or obligations. The Contractor's obligation under this section shall not extend to any liability caused by the sole negligence of the City or its employees.
29. **OVERCHARGES BY ANTITRUST VIOLATIONS:** The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the materials or services used to fulfill the contract.
30. **RIGHT TO ASSURANCE:** Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation with this contract.
31. **ADVERTISING:** Contractor shall not advertise or publish information concerning this contract without prior written consent of the City.

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32. **RIGHT TO INSPECT:** The City may, at reasonable times, and at the City's expense, inspect the place of a Contractor or subcontractor which is related to the performance of any contract as awarded or to be awarded.
33. **FORCE MAJEURE:**
- A. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of Force Majeure. The term "Force Majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force Majeure shall not include late performance by a subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.
  - B. If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this contract.
34. **INSPECTION:** All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this contract shall be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Noncompliance shall conform to the cancellation clause set forth in this document.
35. **EXCLUSIVE POSSESSION:** All services, information, computer program elements, reports, and other deliverables which may be created under this contract are the sole property of the City of Tucson and shall not be used or released by the Contractor or any other person except with prior written permission by the City.
36. **TITLE AND RISK OF LOSS:** The title and risk of loss of material or service shall not pass to the City until the City actually receives the material or service at the point of delivery, unless otherwise provided within this contract.
37. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials must fully comply with all provisions of this contract. If a tender is made which does not fully conform, this shall conform to the cancellation clause set forth within this document.
38. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor shall deliver conforming materials in each installment or lot of this contract and may not substitute nonconforming materials. Delivery of nonconforming materials or a default of any nature, at the option of the City, shall constitute breach of the contract as a whole. Noncompliance shall conform to the cancellation clause set forth within this document.

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39. **LIENS:** All materials, services, and other deliverables supplied to the City under this contract shall be free of all liens other than the security interest held by the Contractor until payment in full is made by the City. Upon request of the City, the Contractor shall provide a formal release of all liens.
40. **PAYMENT:** A separate invoice shall be issued for each shipment of material or service performed, and no payment shall be issued prior to receipt of material or service and correct invoice.

The City shall make every effort to process payment for the purchase of materials or services within twenty-one (21) calendar days after receipt of materials or services and a correct invoice.

41. **LICENSES:** Contractor shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this contract.
42. **COST OF PROPOSAL PREPARATION:** The City shall not reimburse the cost of developing, presenting, or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically providing adequate information in a straightforward and concise manner.
43. **PUBLIC RECORD:** All proposals submitted in response to this request shall become the property of the City and shall become a matter of public record available for review subsequent to the award notification in accordance with and to the extent required by law.
44. **SUBSEQUENT EMPLOYMENT:** The City may cancel this contract without penalty or further obligation pursuant to A.R.S. Section 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract, on behalf of the City is or becomes, at any time while the contract or any extension of the contract is in effect, an employee of, or a contractor to any other party to this contract with respect to the subject matter of the contract. Such cancellation shall be effective when written notice from the Project Manager or City Manager is received by the parties to this contract, unless the notice specifies a later time.
45. **DEFINITION OF KEY WORDS USED IN THE SOLICITATION :**
- |                         |                                                                                                                                                                                                                                                    |
|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| “Shall”, “Will”, “Must” | Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of proposal as non-responsive.                                                                                                         |
| “Should”                | Indicates something that is recommended but not mandatory. If the Offeror fails to provide recommended information, the City may, at its sole option, ask the Offeror to provide the information or evaluate the proposal without the information. |
| “May”                   | Indicates something that is not mandatory but permissible.                                                                                                                                                                                         |
| "City"                  | The City of Tucson, Arizona, a municipal corporation.                                                                                                                                                                                              |

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"Contractor/ Consultant"	The individual, partnership, or corporation who, as a result of the competitive proposal process, is awarded a contract by the City of Tucson.
"Contract"	The legal agreement executed between the City of Tucson, AZ and the Contractor/Consultant.
"Contract Representative"	The City employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and responsible for monitoring and overseeing the Contractor's performance under this contract.
"City Manager"	The City Manager for the City of Tucson, AZ.
"Development Agreement"	The term "development agreement" shall have the same meaning as defined in Section 9-500.05(G)(1) of the Arizona Revised Statutes.

46. **CLEAN UP:** The Contractor shall at all times keep the contract area, including storage areas used by the Contractor, free from accumulation of waste material or rubbish and, prior to completion of the work, remove any rubbish from the premises and all tools, scaffolding, equipment and materials not property of the City. Upon completion of the repair, the Contractor shall leave the work and premises in clean, neat and workmanlike condition.
47. **TAX OFFSET POLICY:** If applicable, in evaluating bids and for purposes of determining the low Offeror, the City shall include the amount of applicable business privilege tax, except that the amount of the City of Tucson business privilege tax shall not be included in the evaluation.

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XIII. OFFER AND ACCEPTANCE FORM

TO THE CITY OF TUCSON:

The Undersigned hereby offers and agrees to furnish the material or service in compliance with all terms, scope of work, conditions, specifications, and amendments in the Request for Proposal. The undersigned must also execute and return the accompanying Offer to Purchase.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature of Person Authorized to Sign

\_\_\_\_\_  
City      State      Zip

\_\_\_\_\_  
Printed Name

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

\_\_\_\_\_  
Title

ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the materials or services listed by the attached contract and based upon the Request for Proposal, including all terms, conditions, specification, scope of work, amendments, the Contractor's Offer and any best and final offers, as accepted by the City. This contract shall henceforth be referred to as Contract No. CMO 2004-\_\_\_\_\_. The Contractor has been cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, or is otherwise directed to do so in writing by the undersigned.

City of Tucson, a municipal corporation

Awarded this \_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Tobin Rosen, Esq.  
As Principal Assistant City Attorney, and not personally

\_\_\_\_\_  
James Keene  
As City Manager, City of Tucson,  
and not personally

\_\_\_\_\_  
Joe Comella  
As Project Manager, and not personally

#### XIV. NON-COLLUSION AFFIDAVIT STATEMENT

State of )  
County of ) ss,

\_\_\_\_\_, being first duly sworn and says;

That he/she is \_\_\_\_\_  
(Party or officer of the firm, etc.)

The party making the foregoing Proposal, that such Proposal is genuine and non-collusive or sham; that said proposer has not colluded, conspired, connived or agreed, directly or indirectly, with any proposer or person, to put in a sham Proposal, or to refrain from proposing, and has not, in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference with any person, to fix or control the submission or selection of proposals, the offering price of an affiant or of any other proposer, or to fix overhead, profit or cost element of said offering price, or of that of any other proposer, or to fix overhead, profit or cost element of said offering price, or of that of any other proposer, or to secure any advantage against the City of Tucson.

That he/she has examined and carefully prepared the foregoing Proposal from the materials provided, and has checked the same in detail before submitting the foregoing Proposal; that the undersigned is duly authorized to make this affidavit.

Firm Name: \_\_\_\_\_

By: \_\_\_\_\_

Title:

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 2004

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



**XV. CORPORATE CERTIFICATE**

**IF CORPORATION OR LEGAL ENTITY OTHER THAN INDIVIDUAL, FILL OUT THE FOLLOWING CERTIFICATE:**

I, \_\_\_\_\_, certify that I am the  
\_\_\_\_\_ of the \_\_\_\_\_  
(type of entity)

who signed this Proposal on behalf of \_\_\_\_\_  
(name of entity)

by authority of its governing body, and within the scope of its powers.

(Corporate Seal)

\_\_\_\_\_  
Name

**XVII. EXHIBITS**

- A. ALTA survey
- B. Proposed Subdivision design
- C. Offer to Purchase

**EXHIBIT A**

ALTA survey

**EXHIBIT B**

Proposed Subdivision layout

EXHIBIT C

OFFER TO PURCHASE

TO: City of Tucson  
Community Services Department  
310 N. Commerce Park Loop  
Tucson, AZ 85701

Silverbell Subdivision

Copies to: Real Estate Division  
City Clerk

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\_\_\_\_\_ hereinafter called  
the BUYER(S), hereby offers and agrees to purchase from the CITY OF TUCSON, a municipal  
corporation, hereinafter called the CITY, at the price and subject to their terms, conditions and covenants  
herein stated, the following described property:

A future platted subdivision of approximately 31 acres, consisting of 105 market lots and 15 lots  
retained by the City, as represented in Exhibit B of this document. (The final purchase agreement will  
be based on the legal descriptions generated by the final plat).

*SUBJECT TO all provisions, conditions, easements, restrictions, rights-of-way, covenants, encumbrances,  
obligations, liabilities, and other matters of record, and to all zoning, building or other laws or  
ordinances, and to any matters which would be shown by an accurate survey or inspection of the  
property.*

The purchase price shall be \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_)  
which includes the deposit tendered with this offer.

The BUYER(S) hereby tenders as a deposit the sum of **One Hundred Thousand and no/100 DOLLARS**  
(\$100,000.00), representing the minimum allowable deposit amount, on the following conditions:

The balance of said purchase price in the amount of \_\_\_\_\_  
DOLLARS (\$ \_\_\_\_\_) shall be paid in cash at closing.

*The closing date shall be delayed until recordation of a final plat for the subdivision. If the Buyer(s) fail  
to fulfill their part of this instrument, the deposit tendered with this offer shall be forfeited to the City. This  
sale is subject to approval by the City Manager, and if forwarded for review, subject to approval of the  
Mayor and Council. The City reserves the right to reject any and all offers either at the City Manager or  
Mayor and Council level of authority.*

*Ninety (90) days from the date of the bid opening are hereby given to the City to obtain official Mayor and  
Council acceptance of this offer. If accepted, the acceptance portion of this instrument shall be signed by  
the City and delivered to the Buyer(s) within ten (10) business days following the date of acceptance.*

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*If this offer is not accepted, the amount of the deposit will be returned to the Buyer(s) with reasonable promptness. The escrow closing agent shall be Fidelity National Title Agency, Inc.*

*City shall provide standard form of title insurance policy in the amount of the purchase price. If Buyer(s) require(s) an extended ALTA title policy, Buyer(s) shall pay for all costs exceeding standard form of title insurance policy. Title insurance policy to be issued by Fidelity National Title Agency, Inc. All other title and escrow costs and expenses incidental to this transaction shall be charged to the parties in the customary manner. Possession of the property shall be given to Buyer(s) on closing.*

*If applicable, the Buyer(s) acknowledge(s) \_\_\_\_\_  
as his/their Broker/Agent. As a result of this sale, the City agrees to pay a commission fee on closing to said Broker/Agent. If deposit is forfeited and/or this transaction does not close, no commission will be paid. No commission fee will be paid if Broker/Agent is also a Principal/Buyer. Commission fee shall be 4% (four percent), under the terms and conditions noted herein. Commission will be paid only to qualified Arizona Licensed Brokers.*

*The Buyer(s) understand(s) and acknowledge(s) that the utility locations and/or dimensions shown herein and in the sales brochure are based on information believed to be reliable; however, the City does not guarantee or warrant this information. Building and occupancy permits are subject to availability of water/sewer capacity at time of actual application.*

*Except as specifically set forth in this Agreement, Seller has not made, nor authorized anyone to make, any warranty or representation about the present or future physical or environmental condition of the subject property and no such representation or warranty shall be implied. Buyer expressly acknowledges that no such warranty or representation has been made and that Buyer is not relying upon any warranty or representation whatsoever, except as may be expressly set forth in this agreement. Buyer acknowledges and agrees that, having been given the opportunity to inspect the property, Buyer is relying solely upon its own investigation of the property and not on any information provided or to be provided by the Seller.*

*Buyer further acknowledges that any information provided on behalf of Seller with respect to the property was obtained from a variety of sources, and that Seller has not made any independent investigation or verification of such information, and makes no representations or warranties as to the accuracy or completeness of such information. Buyer further acknowledges that, to the maximum extent allowed by law, the sale of the subject property is made in an "as is" condition and with all faults.*

*Buyer agrees to commence platting activities by no later than 30 days after executing this agreement, and shall record a final plat within 240 days from that date. Buyer agrees to pay Seller an amount of \$100.00 (One hundred and no/100 dollars) per day as liquidated damages for each day delay from this schedule. Seller shall consider extensions to this schedule based on delays beyond the buyers control. The Agreement between the City of Tucson and the Offeror shall be terminated in the event platting the proposed subdivision is not feasible due to unforeseen site conditions, and deposit monies shall be returned to the Buyer. Should the Buyer terminate the Agreement for any other reason before completion of the plat, all work related to the plat shall become the property of the City of Tucson and deposit monies shall be forfeited.*

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*The Buyer shall work closely with the Community Services Department of the City of Tucson to achieve a subdivision final plat of approximately 105 market lots and 15 public housing townhome lots to be retained by the City. The City lots shall be a minimum of 4,500 square feet. The actual number of market lots may be less due to requirements of governing Codes and Regulations, however the number of market lots may not exceed 115. The Buyer shall pay for all platting costs. The Buyer shall be responsible for establishing a Homeowners Association including transfer of governance of the Association to the homeowners.*

*Phase I shall be completion of project infrastructure including required Silverbell improvements, the La Cholla extension through the site and all infrastructure internal to the site. Infrastructure includes construction of all roads and utilities to each lot. The Buyer shall complete Phase I within nine months of close of escrow. Extensions will be considered based on legitimate delays beyond the control of the Buyer. Failure of the Buyer to comply with this requirement will result in a financial penalty of one million dollars (\$1,000,000) payable to the City of Tucson.*

*Buyer shall accept the subject property "as is" and in its condition on the date of the Closing, subject only to the express provisions, if any, of this agreement. Buyer, for and on behalf of itself, and its heirs, successors, and/or assigns, hereby releases and agrees to hold harmless Seller, its Mayor and Council, Boards, Committees, and Commissions, officers and employees, from and against any and all claims that it may now or hereafter have against Seller for any cost, loss, liability, damage, expense, demand, claim, or cause of action arising or alleged to have arisen from or relating to any defect or condition, including environmental matters, affecting the property or any portion thereof. The hold-harmless provisions of this section shall survive the closing.*

*Transfer of property, if sold, shall be by City of Tucson form of Special Warranty Deed. All terms, covenants, conditions and provisions herein contained, including all development guidelines, shall extend to and be binding upon the parties, their assignees, heirs, devisees, personal representatives or other successors in interest, irrespective of how said interest was acquired. All conditions of sale referenced in the Request for Proposals issued by the City of Tucson in association with the conveyance of this property are made a part hereof by reference, and shall amend this Offer to Purchase accordingly.*

*Amendments/Additional Conditions or Contingencies:*

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City of Tucson – Community Services Department  
Silverbell Subdivision Request for Proposals (RFP)

*This instrument contains the entire agreement between the City and the Buyer(s). All understandings, conversations and communications, oral or written, between the parties hereto, or on behalf of either of them, are merged into and superseded by this instrument and shall be of no further force or effect.*

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
BUYER(S) SIGNATURE

\_\_\_\_\_  
E-MAIL ADDRESS

\_\_\_\_\_  
ADDRESS OF BUYER(S)

\_\_\_\_\_  
TELEPHONE & FAX NUMBER

A C C E P T A N C E

*The hereinabove offer to purchase City property at the price and according to the terms, covenants, conditions, and provisions above stated is hereby accepted pursuant to approval by the Mayor and Council. The City agrees to pay applicable brokerage fee upon close of escrow to {to be filled in by Buyer and/or Buyer's agent/broker}*

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

CITY OF TUCSON, a municipal corporation

By \_\_\_\_\_  
MAYOR

ATTEST:

APPROVED AS TO FORM:

By \_\_\_\_\_

City Clerk

By \_\_\_\_\_

City Attorney

OFFER AND ACCEPTANCE READ AND CONCURRED:

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

By \_\_\_\_\_  
BROKER/AGENT

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